REMARKS

The present response is intended to be fully responsive to all points of rejection raised by the Examiner and is believed to place the application in condition for allowance. Favorable reconsideration and allowance of the application is respectfully requested.

Applicants assert that the present invention is new, non-obvious and useful. Prompt consideration and allowance of the claims is respectfully requested.

Status of Claims

Claims 1-5 are pending in the application. Claims 1-5 have been rejected. Claims 1-5 have been amended.

New claims 6-9 have been added in order to further define what the Applicants consider to be the invention. Support for the amendments may be found in the specification, for example, in the summary, where it is described that: The method includes the steps of: transmitting a first type of communication with a first bit rate, transmitting a second type of communications simultaneously with said first type of communication for a predefined period of time, calculating the network bandwidth for providing the network available bandwidth and adjusting packet transmission bitrate in accordance with the network available bandwidth for controlling the network bandwidth. The communications being transmitted indicate usage of actual content data to "probe" the network and detect available bandwidth. Further the network bandwidth is to be controlled by adjusting packet transmission bit rate of the content data in accordance with the network available bandwidth.

Applicants respectfully assert that the amendments to the claims and abstract add no substantially new matter.

Remarks to the Abstract

In the Office Action, the Examiner objected to the Abstract because it contains the legal phraseology "said". Applicants have amended the abstract to remove the legal phraseology, as requested by the Examiner.

CLAIM REJECTIONS

35 U.S.C. § 112 Rejections

In the Office Action, the Examiner rejected claim 1 under 35 U.S.C. § 112, because "There is insufficient antecedent basis for these limitations in the claims".

Claim 1 has been amended to overcome the antecedent basis deficiencies noted by the Examiner. It is respectfully asserted that the foregoing amendment merely addresses matters of form and does not change the literal scope of the claim in any way or result in any prosecution history estoppel.

Applicants respectfully assert that these amendments render claim 1 proper under 35 USC 112 and request that the rejection be withdrawn.

35 U.S.C. § 103 Rejections

In the Office Action, the Examiner rejected claims 1-5 under 35 U.S.C. § 103(a), as being unpatentable over Kikuchi et al. (US#6,614,763) in view of Berthaud et al. (US#5,815,492).

Applicants respectfully traverse the rejection of the claims over Kikuchi et al. in view of Berthaud et al.

Applicants assert that it would not be obvious to include in Kikuchi et al. Thus, neither Kikuchi et al. nor Berthaud et al., alone or in combination, teach or suggest the invention of claims 1 and 4.

Kikuchi et al. teaches, in the abstract: "Measurement packets are sent at equi-intervals from a sending unit into a network path. The probing packets are received by a reception unit, which measures the packet transmission time to estimate an available bandwidth of a network path from a parameter Q indicative of a correlation in the packet transmission time between adjacent packets". Examiner states that Kikuchi et al. "does not disclose expressly the step of adjusting packet transmission bit rate in accordance with the available bandwidth for controlling network bandwidth."

Berthaud et al. teaches, in the abstract: "Method and system for adapting access to a packet switching network including a dynamic bandwidth adjustment mechanism which continuously monitors the mean bit rate of the signal source and the loss probability of the connection. These values are filtered to remove noise and then used to test whether the values fall within a pre-defined acceptable adaptation region in the mean bit rate, loss probability plane. Values falling outside of this region trigger bandwidth adaptation procedures which, in turn, result in acquiring a new connection bandwidth, and determining new parameters for the adaptation mechanism."

An obviousness rejection requires a teaching or a suggestion by the relied upon prior art of all the elements of a claim (M.P.E.P. §2142). Neither Kikuchi et al. or Berthaud et al., alone or in combination teach or suggest using bit rates of actual content data to detect or calculate the network bandwidth for providing the network available bandwidth; and adjusting packet transmission bit rate of the actual content data in accordance with the network available bandwidth for controlling the network bandwidth, as taught in amended claims 1 and substantially in amended claim 4. Since Kikuchi et al. or Berthaud et al., alone or in combination, do not teach or suggest all the elements of any of independent claims 1 and 4, the Examiner fails to establish a prima facie showing that the Kikuchi et al. or the Berthaud et al. inventions, alone or in combination, teach or suggest every feature of independent claims 1 and 4.

Dependent claims 2-3 and 5-9 depend on, directly or indirectly independent claims 1 and 4, and therefore include all the limitations of these claims. Therefore independent claims 1 and 4 and dependent claims 2-3 and 5-9 are allowable. Applicants request that the rejections of independent claims 1 and 4 and claims 2-3 and 5-9 dependent thereon be withdrawn.

In view of the foregoing amendments and remarks, the pending claims are deemed to be allowable. Their favorable reconsideration and allowance is respectfully requested.
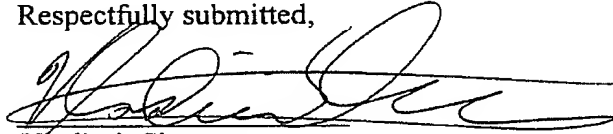
Should the Examiner have any question or comment as to the form, content or entry of this Amendment, the Examiner is requested to contact the undersigned at the telephone number below. Similarly, if there are any further issues yet to be resolved to advance the

prosecution of this application to issue, the Examiner is requested to telephone the undersigned counsel.

Please charge any fees associated with this paper to deposit account No. 50-3400.

Respectfully submitted,

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